

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

ASSOCIATION OF PROBATION & PAROLE)
EMPLOYEES', a/w SERVICE EMPLOYEES')
INTERNATIONAL UNION, AFL-CIO, CLC,)
)
Petitioner,)
)
vs.)
)
DEPARTMENT OF CORRECTIONS AND)
HUMAN RESOURCES, STATE OF MISSOURI,)
)
Respondent,)
)
COUNCIL 72, AFSCME, AFL-CIO,)
)
Intervenor.)

Public Case No. 81-028

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Association of Probation and Parole Employees' Union, affiliated with Service Employees' International Union, AFL-CIO, CLC, filing a petition as public employee representative of certain employees of the Department of Corrections and Human Resources. On January 21, 1982 and March 30, 1982 hearings were held in Jefferson City, Missouri, at which legal council representing the Association of Probation and Parole Employees' Union, the Department of Corrections and Human Resources, and also Council 72, AFSCME, AFL-CIO, an intervening party, were present. The case was heard by State Board of Mediation Chairman, Mary Gant, Employer Member William Hunker, and Employee Member Charles Yaeger. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by Section 105.525, RSMo 1978.

At the hearings the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

There are approximately 2,500 employees in the Department of Corrections and Human Resources. Within the Department there are three Divisions. The Division of Administration has approximately 70 employees. Its primary function is fiscal management, property control, construction, physical plant maintenance, personnel budgets, purchasing, accounting/bookkeeping, and inmate accounts. The Division of Adult Institutions has approximately 1,900 employees spread throughout eleven institutions. It's primarily concerned with the health care, education, feeding, recreation, religious training, classification and guarding of prisoners and the maintenance of correctional facilities. The third Division is the Board of Probation and Parole which has approximately 600 employees throughout 36 district offices and on the premises of the eleven correctional facilities. Its primary functions are to oversee offenders' probation and parole and to supervise alternative programs to incarceration.

In the contrast to the employees working within the Division of Adult Institutions who spend most, if not all, of their time within correctional facilities, most of the employees of the Division of Probation and Parole work in separate district offices. There are approximately 36 employees of the Division of Probation and Parole assigned to correctional institutions. Those assigned to the adult institutions are under the administrative control of the Division of Probation and Parole, rather than the Division of Adult Institutions and if they have grievances, address those grievances to the Board of Probation and Parole. There are no Division of Adult Institution employees assigned to the district offices where employees of the Division of assigned to the district offices

where employees of the Division of Probation and Parole work. Probation and Parole officers have only minimal and sporadic contact with employees in the Division of Adult Institutions.

The Chairman of the Board of Probation and Parole is the ultimate authority for the hiring, firing, and promotion of employees in that division, and also has the authority to resolve grievances of Probation and Parole employees.

Probation and Parole Officer I conducts pre-sentencing investigations for the courts, pre-parole investigations for the Board of Probation and Parole, and supervises probationers or parolees. The Board Investigators I and II are engaged in investigative work for the Board of Probation and Parole for the purpose of determining the feasibility and risk of releasing individuals from jail, pending trials on their own recognizance.

The entry level of professional positions in the Division of Probation and Parole and Division of Adult Institutions are each designated as Social Service Trainee. The Social Service Trainees within the Division of Probation and Parole and Division of Adult Institutions are trained separately from the Social Service Trainees within the Division of Adult Institutions. A Social Service Trainee within the Division of Probation and Parole, upon completing a year of training, will generally be promoted to a Probation and Parole Officer I. The promotional line from that point is normally Probation and Parole Officer II, Probation and Parole Supervisor I, and Probation and Parole Supervisor II. Employees holding the classifications of Bond Investigator I and II perform duties more similar to PO I's than clericals and frequently progress to PO I's. Job openings in one division of the Department of Corrections and Human Resources are not routinely posted in the other divisions, and the normal career progression for an employee within the Division of Probation and Parole is within that division. Although lateral transfers were permitted between the Division of Adult Institutions and the Division of Probation

and Parole without resort to the register process, fewer than 10% of the professional employees within the respective divisions, have laterally transferred from one division to another.

Each of the 36 District Offices of the Division of Probation and Parole is headed by a District Supervisor. These supervisors hold the classifications of either Probation and Parole Supervisor I or Probation and Parole Supervisor II. When an office grows to the point that it has six Probation and Parole Officers, excluding the Supervisor, one of the Probation and Parole Officers I is designated as a Probation and Parole Officer II. A Probation and Parole Officer II has no authority to promote or discipline other employees, nor does he have the authority to transfer people and responsibilities from task to task. Probation and Parole Officer II spends almost all of his time performing daily job functions which are also performed by Probation and Parole Officers I.

The Department of Corrections and Human Resources employs approximately 350 clerical employees. The positions of Clerk I through IV, Clerk Stenographer I through III, Clerk Typist I through III, Switchboard Operator I & II, and Account Clerk I & II are shared among the three Divisions. These job classifications perform basic secretarial, clerical, receptionist, and other secretarial office support functions.

The Department also employs workers with the job classification of Storekeeper I. Employees of this class are responsible for the handling of a variety of food, clothing, mechanical or office supply items of considerable value including storage, distribution, sales and record keeping. These employees do not perform basic secretarial, clerical, receptionist, or other secretarial office support functions as a part of their assigned work.

In 1968, the Department of Corrections and the Intervenor entered into a Memorandum of Understanding. In this Memorandum of Understanding, the Department of Corrections recognized the Intervenor as the exclusive bargaining

representative of "its membership" for the discussion and solution of problems of its membership.

CONCLUSIONS OF LAW

The Association of Probation and Parole Employees, a/w Service Employees' International Union, AFL-CIO, CLC, has petitioned to be certified as public employee representative of one bargaining unit of clerical workers within the Division of Probation and Parole and one bargaining unit consisting of the positions of Social Service Trainee, Bond Investigators I & II, and Probation and Parole Officers I & II within that same Division. The Respondent contends that the appropriate unit in this case should include all non-supervisory employees in the Department of Corrections and Human Resources. The parties have stipulated that employees with titles of Supervisor I through IV and Management Analyst I should be excluded from any bargaining unit as Supervisors. The Respondent further contends, joined by Intervenor, that there is a valid Memorandum of Understanding in effect between Respondent and Intervenor which bars any representation election in this case. The issue before the Board is whether the unit petitioned for is appropriate.

The Board has held that the theory of contract bar does apply in the public sector in the State of Missouri, and is recognized by this Board if an employer (1) meets, confers and discusses proposals concerning the customary terms and conditions of employment with the employee's bargaining representative; (2) reduces those discussions to writing; (3) presents such proposals to the appropriate governing body; and (4) the governing body adopts those proposals. Local 453, IBEW v. Southwest Missouri State University, Public Case No. 76-035 (SBM 1977). To this list of four requirements the Board now adds that the contract must, by its terms, clearly encompass the employees sought in the petition, as we believe to require any less

would be an unreasonable bar to employee's rights to free choice of bargaining representative. The National Labor Relations Board has held that a contract that only covers members of the union does not clearly encompass the employees sought in the petition and does not bar election. Appalachian Shale Products Co., 121 NLRB 149, 42 LRRM 1506 (1958). Bob's Big Boy Family Restaurants, 235 NLRB 174, 98 LRRM 1144 (1978). The Board agrees with the NLRB holding and finds no contract bar where, as in this case, the contract encompasses "members only."

Having so held, we cannot find that Intervenor has shown a "legitimate interest," as required by Board Rule 40-2.130, by way of "a signed, valid Memorandum of Understanding or Agreement encompassing the proposed bargaining unit." However, the Board does not find Rule 40-2.130 to be exclusive in defining the term "legitimate interest." We hold that in addition to a valid Memorandum of Understanding and the gathering of a 10% showing of interest as two determinants of a "legitimate interest" for the purpose of third-party intervention, a ten year long history of bargaining is good cause shown to demonstrate a legitimate interest in the proceeding.

An appropriate unit is defined by Section 105.500 (1), RSMo 1978, as:

"a unit of employees at any plant or installation or in a craft or function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

The Board has adopted a number of factors in determining whether employees have a community of interest. Service Employees International Union, Local 96, AFL-CIO v. City of Blue Springs, Public Case No. 79-031 (SBM 1979). The factors applicable here are amount of contact and interchange among employees and similarity of work performed.

The Board joins the Probation and Parole Officer I & II, Bond Investigators I & II, and those Social Service Trainees within the Division of Probation and Parole into one

bargaining unit. The amount of interchange among these classifications is fairly high, as it is not unusual to be promoted from Social Service Trainee and Bond Investigator to Probation and Parole Officer I. Probation and Parole Officers and Bond Investigators perform similar work involving offender placement and investigation and are unique within the entire Department of Corrections and Human Resources. While some Probation and Parole Officers operate out of Adult Institutions facilities, this hardly demonstrates a sufficient community of interest with Adult Institutions personnel to group these several unique classifications into a unit with all other Department workers. While there are Social Service Trainees under the Division of Adult Institutions, those in the Division of Probation and Parole are distinct in training and purpose and can only be said to share a sufficient community of interest with the Probation and Parole Officers I & II and Bond Investigators I & II.

Supervisors have consistently been excluded by the Board from bargaining units clearly non-supervisory employees. The Board utilizes a number of factors in determining whether an employee is a supervisor. These factors include: number of employees supervised; whether the supervisor is primarily supervising employees; whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employee; and authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees, Western Missouri Public Employees, Local 1812, v. Jackson County Department of Corrections, Public Case No. 90 (SBM 1977). Here, the Probation and Parole Officer II has no power to effectively recommend hiring, promotion, transfer, discipline or discharge of the employees under them. Because of this lack of supervisory responsibility the Board finds that the Probation and Parole Officer II's are not supervisors and are included in the bargaining unit.

The Board joins into one bargaining unit of clericals in the Department of Corrections and Human Resources employees with the classifications of Clerks I

through IV, Clerk Stenographers I through III, Clerk Typists I through III, Switchboard Operators I & II, and Account Clerks I & II. These job classifications fit into an appropriate bargaining unit because of the similarity in the work they perform. We do not join these employees into a bargaining unit with Probation and Parole Officers, or prison support staff, for example, because the difference in work performed clearly precludes any claims of a community of interest with other than non-clericals. It is for this very reason, the difference in work performed, that we exclude Storekeeper I from the unit of clericals. The clerical bargaining unit stretches Department wide because all these positions are shared among the three Divisions and not unique to any one.

DECISION

The State Board of Mediation finds that the appropriate units of employees are as follows:

"all Probation and Parole Officers I & II, Bond Investigators I & II, and Social Service Trainees within the Division of Probation and Parole, within the Department of Corrections and Human Resources; excluding supervisors and all other employees of the Department of Corrections and Human Resources."

"all Clerks I through IV, Clerk Stenographers I through III, Clerk Typists I through III, Switchboard Operators I & II, and Account Clerks I & II within the Department of Corrections and Human Resources; excluding supervisors and all other employees of the Department of Corrections and Human Resources."

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or a designated agent thereof, among the employees in the unit found appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately proceeding the

date below, including employees who did not work during that period because of vacation of illness. Ineligible to vote are those employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall whether or not they desire to be represented for the purpose of exclusive representation by Petitioner, Association of Probation and Parole Employees, a/w Service Employees' International Union, AFL-CIO, CLC, or Intervenor, Council 72, AFSCME, AFL-CIO.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, and Intervenor, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined to be appropriate who were employed during the designated payroll period.

Signed this 29th day of July, 1982.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ William Hunker
William Hunker, Employer Member

/s/ Charles Yaeger
Charles Yaeger, Employee Member